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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,875	03/19/2001	Bruce Albert Yeazell	6805C	1033

27752 7590 11/01/2004

THE PROCTER & GAMBLE COMPANY  
INTELLECTUAL PROPERTY DIVISION  
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CINCINNATI, OH 45224

EXAMINER

LU, JIPING

ART UNIT	PAPER NUMBER
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3749

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/811,875  
Filing Date: March 19, 2001  
Appellant(s): YEAZELL, BRUCE ALBERT

**MAILED**

**NOV 01 2004**

**Group 3700**

\_\_\_\_\_  
Mark A. Charles  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 4/29/2004.

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**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

The rejection of claims 11-25 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

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**(9) Prior Art of Record**

5,238,587	Smith et al.	801993
5,876,462	Weller et al.	3-1999
5,789,368	You et al.	8-1998

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**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 11-19, 21 and 23-24 are rejected under 35 U.S.C. 103(a) as unpatentable over Smith et al. (U. S. Pat. 5,238,587). This rejection is set forth in a prior Office Action, mailed on 8/26/2003.

Claims 11-19 and 23-24 are rejected under 35 U.S.C. 103(a) as unpatentable over Weller et al. (U. S. Pat. 5,876,462). This rejection is set forth in a prior Office Action, mailed on 8/26/2003.

Claims 20 and 22 are rejected under 35 U.S.C. 103(a) as unpatentable over Smith et al. (U. S. Pat. 5,238,587) in view of You et al. (U. S. Pat. 5,789,368). This rejection is set forth in a prior Office Action, mailed on 8/26/2003.

Claims 20-22 are rejected under 35 U.S.C. 103(a) as unpatentable over Weller et al. (U. S. Pat. 5,876,462) in view of You et al. (U. S. Pat. 5,789,368). This rejection is set forth in a prior Office Action, mailed on 8/26/2003.

Claim 25 is rejected under 35 U.S.C. 103(a) as unpatentable over Smith et al. (U. S. Pat. 5,238,587) or Weller et al. (U. S. Pat. 5,876,462). This rejection is set forth in a prior Office Action, mailed on 8/26/2003.

**(11) Response to Argument**

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Since the appellant merely claims a kit, then, the appellant must positively claim the invention. Here the appellant merely claims and relies upon an absence of an element, e.g. bag, in a kit for patentability. The examiner is uncertain what the relationship is between the absence of the bag and the kit. A kit must contain a number of positive items not an absence of items. Here, it appears to be the appellant's intention to rely upon the negative limitation "in absence of a bag" for patentability. The examiner cannot agree with the appellant for patentability of a kit with an absence of an element.

With regard to the claim limitation "in the absence of bag", it is well settled that to eliminate an element and its function is deemed to be obvious if the function of the element is not desired. The function of the bag is to contain the liquid cleaning/refreshment composition. In this case, it is the containment function of the bag is being eliminated. Therefore, it is the examiner's position that to omit the bag and its containment function is an obvious expedient because the remaining elements perform the same functions as before. The elimination of the bag and its containment function is also deemed to be an obvious matter where the function attributed to such bag is not desired or required. This rejection is consistent with MPEP 2144.04 II and other legal precedents, Ex parte Wu, 10 USPQ 2031; In re Larson, 340 F 2d 965, 144 USPQ 347 (CCPA 1965) and In re Kuhle, 526 F 2d. 553, 188 USPQ 7 (CCPA 1975).

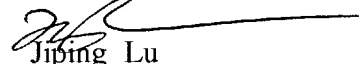
The applicant also argued that there were additional benefits of removing wrinkles which the prior art references failed to teach. It should be noted that the wrinkle removals are nowhere to be found in the claims except in the preamble of claim 17. This line of arguments is not germane to the claims at issue. Moreover, the claimed cleaning/refreshment composition in the

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prior art is same as claimed. Therefore, it is inherent that the additional benefit of removing wrinkles would be accomplished by the prior art references with the same chemicals as claimed.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

  
Jiping Lu  
Primary Examiner  
Art Unit 3749


J. L.

November 1, 2004

Conferees

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